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Pharmacia Beats Mass. School's PCB Contamination Suit

By **Jessica Corso**

Law360, Chicago (September 23, 2015, 7:53 PM ET) -- Pharmacia Corp. couldn't have known as far back as 1961 that polychlorinated biphenyls present in window caulk installed in a Massachusetts elementary school were potentially toxic, a federal judge ruled Wednesday, tossing a former class action against the one-time PCB manufacturer.

U.S. District Judge Denise J. Casper granted [summary judgment](#) to Pharmacia, saying that Congress didn't outlaw PCBs until 1979 and the town of Lexington didn't provide sufficient evidence that the former [Monsanto Co.](#) company knew of the dangers of the substance before that date.

"PCBs used in caulk products were sold last by the former Monsanto Company in 1970, 45 years ago," Monsanto representative Charla Lord said in a statement to Law360 Wednesday. She said that the danger of the chemical, which the U.S. [Environmental Protection Agency](#) has since listed as a carcinogen, was "unforeseeable" before that time.

Lexington filed a proposed class action in 2012, saying that it was informed by the EPA in 2009 that high levels of PCBs existed in Estabrook Elementary School due in part to caulk used in construction of the school that took place in the 1960s.

Because Pharmacia, then Monsanto, was the sole domestic manufacturer of PCBs during that time, it should be forced to reimburse all Massachusetts school districts that have had to perform remediation to clean up PCB contamination, Lexington argued.

Monsanto knew about health problems associated with PCBs as early as the 1930s, when testing on animals demonstrated that prolonged exposure to the substance could cause liver damage, the town said.

Judge Casper denied class certification in the suit in March and on Wednesday threw the suit out altogether. Though she declined to nix the case on statute of limitation grounds, saying it was unclear if Lexington knew of the contamination prior to the 2009 EPA letter, the judge did suggest that the town should pursue the caulk manufacturer if it wants relief.

“Given that it was at least one step removed from the purchasing decision, Lexington does not explain how Pharmacia was to identify Lexington or otherwise effectively communicate any danger associated with PCBs,” Judge Casper wrote in her opinion.

Although Lord denied Monsanto’s responsibility in the instant case, she said that “where it has been determined that Monsanto has responsibility relating to PCBs, we’ve met those obligations and we’ll continue to do so.”

Pharmacia is now owned by [Pfizer Inc.](#)

A representative for Lexington couldn’t be reached for immediate comment Wednesday.

Pharmacia is represented by Richard P. Campbell, Richard L. Campbell, Brandon L. Arber and Diana A. Chang of [Campbell Campbell Edwards & Conroy PC](#) and Carol A. Rutter and Robyn D. Buck of [Husch Blackwell LLP](#).

Lexington is represented by Melissa C. Allison, Scott P. Lewis and Kevin D. Batt of [Anderson & Kreiger LLP; Robert S. Chapman](#) and Jon-Jamison Hill of [Eisner Kahan Gorry Chapman Ross & Jaffe; Kevin J. Madonna](#) of Kennedy & Madonna LLP; and Esther L. Klisura of [Sher & Leff LLP](#).

The case is Lexington, Town of v. Pharmacia Corporation et al., case number [1:12-cv-11645](#), in the U.S. District Court for the District of Massachusetts.

— Additional reporting by Emily Field. Editing by Ben Guilfooy.

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